

***IN THE UNITED STATES PATENT AND TRADEMARK OFFICE***

Applicant: Akira OHTSU

Title: IMAGE FORMING APPARATUS AND IMAGE FORMING  
METHOD WITH SYNCHRONOUS AND ASYNCHRONOUS  
CONTROL FOR CONTINUOUS OPERATION

Appl. No.: 10/003,257

Filing Date: 12/06/2001

Patent No.: 7,583,395

Grant Date: 09/01/2009

Examiner: Fred Guillermet

Art Unit: 2625

Confirmation Number: 4445

**REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT**  
**UNDER 37 C.F.R. §1.705**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Applicants respectfully request reconsideration of the Patent Term Adjustment (PTA) determined for the captioned patent, which issued on 09/01/2009 as U.S. Patent No. 7,583,395.

The Patent Office determined that the patent was entitled to 1972 days of PTA. Applicants believe that this PTA determination was made in accordance with the "Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. §154(b)(2)(A)" published at 69 Fed. Reg. 34238 (Jun. 21, 2004). Under that interpretation of the PTA statute, any PTO delay under 35 U.S.C. § 154(b)(1)(A) is deemed to overlap with any 3-year maximum pendency delay under 35 U.S.C.

§ 154(b)(1)(B), and so, as a practical effect, PTA may be awarded under §154(b)(1)(A) or §154(b)(1)(B), but not both.

On September 30, 2008, the United States District Court for the District of Columbia issued a decision finding that the U.S. Patent and Trademark Office's interpretation of the PTA statute is incorrect. *Wyeth v. Dudas*, Civ. Action No. 07-1492 (JR) (Sep. 30, 2008). The court determined that, under the correct interpretation of the PTA statute, periods of "overlap" are limited to "periods of time . . . [that] occur on the same day." *Wyeth*, slip op. at 8. Thus, a PTO delay under §154(b)(1)(A) overlaps with a delay under §154(b)(1)(B) only if the delays "occur on the same day." *Id.*

Applicants have recalculated PTA for the captioned patent under the court's interpretation of the PTA statute, and have determined that the patent is entitled to 2399 days PTA, as shown on the attached sheet, which shows the relevant delays under 37 CFR §§1.702(a) and (b), and under 37 CFR §§1.703(a) and (b).

There were no circumstances during the prosecution of the application resulting in the patent that constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704.

(a) Total of non-overlapping PTO delay under §154(b)(1)(A) & (B): 2399 days

(b) Total Applicant delay: 0 days

Final PTA Determination: 2399 days

Applicants therefore respectfully request that the patent be accorded 2399 days PTA.

The patent is not subject to a terminal disclaimer.

Payment of the requisite fee is submitted herewith. Should no proper payment be enclosed herewith, as by the credit card payment instructions in EFS-Web being incorrect or absent, resulting in a rejected or incorrect credit card transaction, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

However, because this PTA error is due to a Patent Office error in interpreting and applying the PTA statute, a refund of the fee is respectfully requested.

Applicants request further that a decision on this request be **deferred or delayed** until a final decision has been rendered in *Wyeth v. Dudas*, which is now on appeal at the U.S. Court of Appeals for the Federal Circuit, under Federal Circuit Docket No. 2009-1120.

Respectfully submitted,

Date October 29, 2009

By 

FOLEY & LARDNER LLP  
Customer Number: 22428  
Telephone: (202) 945-6162  
Facsimile: (202) 672-5399

Pavan K. Agarwal  
Attorney for Applicant  
Registration No. 40,888

## Patent Term Adjustment Calculation System

Add a new event to this case

Docket Number: 065905-0240  
 Application Number: 10/003257  
 Patent Number: N/A

	Event Description	Event Date	Days from Filing	PTO Days	Applicant Days
Edit Delete	Application Filing Date	12/06/2001	0		
	14 month From Application date	02/06/2003	427		
	3 Year Period Starts	12/06/2004	1,096		
Edit Delete	Non-Final Office Action	07/01/2008	2,399	(1972)	
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	10/01/2008	2,491		
Edit Delete	Final Office Action	01/07/2009	2,589		
Edit Delete	Final Office Action Response Received at PTO	03/26/2009	2,667		
Edit Delete	Notice of Allowance	04/30/2009	2,702		
Edit Delete	Issue Fee Paid	07/23/2009	2,786		
Edit Delete	Patent Grant Date	09/01/2009	2,826	(1730) 2399	
			Totals:	2,399	0
			PTA:	2,399	

Created and maintained by

**FOLEY****FOLEY & LARDNER LLP**